Richmond Convalescent Hospital, Inc., and Chartham Management, Inc., and Prestige Health Care of California, Inc. ***and*** **Maria Wells** ***and*** **Hospital and Health Care Workers Local 250, Service Employees International Union, AFL–CIO.** Cases 32–CA–12038 and 32–CA–12260

May 20, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND BROWNING

On June 4, 1993, Administrative Law Judge James M. Kennedy issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

Since 1989, Richmond Convalescent Hospital, Inc. (Richmond) operated a nursing home in Richmond, California. In 1989, Richmond entered into a management agreement with Chartham Management, Inc. (Chartham) pursuant to which Chartham managed the day-to-day operations of the facility. Don R. Bybee was the owner, president, and director of Richmond and Chartham at all relevant times.[1]

During all material times, the Union was the Section 9(a) representative of a bargaining unit of employees at the facility. The most recent collective-bargaining agreement between Richmond and the Union was effective from September 1, 1990, through August 31, 1992.

On June 1, 1991, Richmond terminated Chartham's management contract and entered into a nearly identical management agreement with Prestige Health Care of California, Inc. (Prestige), a separately owned and managed company. As the judge found, Richmond was the employer of the facility's employees, pursuant to the terms of the management agreement, and Prestige was Richmond's agent. The judge found, and it is now undisputed, that during the time Prestige managed the facility, Respondents Richmond and Prestige[2] (jointly referred to as the Respondents) committed several unfair labor practices.[3]

In October 1991, Union Bank began foreclosure proceedings against the facility. Don R. Bybee, who held a leasehold interest in the property, agreed to relinquish his interest in the property and the business to the bank. Two previous owners of the facility, Dr. Willie M. Shields Jr. and Cecelia Shields, took over the facility on November 1, 1991, from Richmond.

1. The judge dismissed the complaint allegation that the Respondents violated Section 8(a)(5) and (1) of the Act by failing to remit to the Union dues deducted from the employees' paychecks since June 1, 1991. The judge found that the evidence failed to show that the Respondent did not remit the dues owed to the Union. We disagree with the judge.

The judge found that the ledger card produced by the Union was confusing and therefore failed to establish that the dues were not paid. In this regard, the judge found that the entries on the card indicated dues were paid on July 9, 1991, for March, April, May, and possibly June 1991, but that because of handwritten strikeouts and markings, the card failed to show that the Respondents were in arrearage since June 1991, as alleged in the complaint. The judge also found that the testimony of Union Assistant Controller Maggie Murphy regarding the card failed to clarify the evidence. The judge noted that dues were paid in July 1991, 6 weeks after the complaint alleges that dues were stopped, that the Union did not send letters to the Respondents claiming an arrearage and demanding payment, and that it was logical to conclude that payments were remitted because dues had been deducted from at least one employee's paycheck during the time in question.

We do not agree with the judge's reasoning. The ledger card kept by the Union for the years 1991 and 1992 shows an absence of entries after July 9, 1991, through the end of that year. Murphy, who supervised dues collection, testified that she was familiar with the method the Union used to record and track dues remittances, that the card indicated that the last receipt of dues in 1991 was on July 9 for the amount of $1,944.86, and that the Union did not receive any further dues payments in 1991 after that date. Although the card contains some corrections and strikeouts, we find that the card is sufficiently clear to support Murphy's testimony. The complaint's reference to June 1,

[1] Bybee owns some shares of Chartham personally, while the remaining shares are held by D.R.B. Holdings, Inc., an Oregon corporation wholly owned by Bybee, who serves as its president and secretary.

[2] Prestige neither filed an answer to the complaint nor appeared at the hearing.

[3] We adopt the judge's findings, to which no exceptions were filed, that the Respondents violated Sec. 8(a)(3) by discharging employee Maria Wells on September 4, 1991, because of her union activities and violated Sec. 8(a)(5) by refusing to supply the Union with a seniority list and related information on or about October 4, 1991, by refusing to assist the Union in selecting an arbitrator to resolve a grievance filed on behalf of Wells, and by refusing to bargain with the Union over the effects of the transfer of ownership of the facility to new owners in November 1991.

1991, as the date the payments were stopped does not militate against our finding of an arrearage after July 9, 1991.

Further, we find, contrary to the judge, that the Union notified Prestige Owner Steve Ewing that the Union had not received the dues payments. Thus, by letter dated October 15, 1991, the Union wrote to Ewing stating that the Company was behind in the payments and inquiring as to the reason they were not being forwarded promptly. In a November 5, 1991 letter to Ewing, the Union referred to its need to discuss an ''accounting of dues and initiation fees refunded.'' In addition, the record shows that Union Field Representative John Martin orally informed Prestige Administrator JoBeth Strawn of the dues arrearage. Contrary to the judge, we find the fact that the Respondents continued to deduct dues from employees' paychecks does not establish that the Respondent remitted the dues to the Union.

The Respondents were required to remit the dues to the Union pursuant to Richmond's collective-bargaining agreement with the Union. The Respondents do not contend that the dues in question were in fact paid, and the Respondents failed to proffer any evidence rebutting that submitted by the General Counsel from which a failure to remit is reasonably inferrable.

Accordingly, we find that the Respondents unilaterally failed to remit dues to the Union in violation of Section 8(a)(5) and (1) of the Act. *Sullivan Motor Delivery*, 301 NLRB 285 (1991).

2. The General Counsel excepts to the judge's finding that the Respondents did not fail to pay health plan premiums to the health insurance company, Kaiser Permanente, pursuant to the collective-bargaining agreement between Richmond and the Union. We find merit to this exception.

The record shows that Union Representative Martin learned in early fall 1991 from an employee that Kaiser was refusing to pay a claim. He spoke with Prestige Administrator Strawn, who acknowledged that Prestige was in arrears at the time. In late October, Strawn showed Martin a letter from Kaiser dated October 25, 1991, to Respondent Prestige. The letter stated that Kaiser had received payments covering premiums through July 1991 and that Prestige's account was being reinstated, but that if Prestige failed to make its payments for August, September, October, November, and December 1991 by November 15, 1991, the account would be ''reterminated'' effective September 1, 1991. The letter stated that as a condition of reinstatement, premiums were due by the 15th of the month preceding the month of coverage and threatened that the account would not be reinstated if canceled in the future due to nonpayment.

The judge found that the October 25, 1991 letter from Kaiser to Prestige showed only that Prestige had previously been in arrears and that it had made a sufficient payment to satisfy the arrearage. The judge therefore concluded that there was insufficient evidence to establish an 8(a)(5) violation because he found that late payments to insurance companies are not violations of the Act and it was not known whether subsequent payments were made, whether the insurance lapsed as Kaiser threatened, or whether payment was timely made on November 15, 1991.

We find, contrary to the judge, that the letter establishes on its face that the Respondents were in arrears from August to November 1991, at which time the facility was taken over by a new employer. The Respondents do not contend that payments were timely made and proffered no evidence to show that they had at any time paid the premiums in question. As the Respondents were obligated to pay the premiums in accordance with the collective-bargaining agreement, their failure to do so constitutes a unilateral change in violation of Section 8(a)(5) and (1) of the Act. *Stevens & Associates Construction Co.*, 307 NLRB 1403 (1992); *Domestic Steel Sales Co.*, 258 NLRB 785 (1981).

3. The judge found that the Respondents violated Section 8(a)(5) and (1) of the Act by failing to bargain over the effects of the transfer of the facility to the Shieldses. The General Counsel excepts to the failure of the judge to order a limited backpay remedy as set forth in *Transmarine Navigation Corp.*, 170 NLRB 389, 390 (1968). We find merit to the exception.

The Union first heard about a prospective takeover when Union Representative Martin in October 1991 happened to speak to Dr. Willie M. Shields Jr., who said he was going to be taking over the facility. Martin wrote a letter to Prestige on November 5, 1991, stating that he wanted to bargain about dues and initiation fee obligations, health plan payments, the Wells' arbitration,[4] overtime pay, short pay, and sick leave.

In response, Prestige's attorney Bettye Springer called Martin, who told her that they had a lot of outstanding issues to resolve. Springer told Martin that she would have to contact him later after reaching her client.

Martin again wrote to Prestige on November 26, 1991, requesting bargaining over the Wells' arbitration as well as bargaining over the effects of the transfer of the facility to the Shieldses. The letter stated that he was again requesting a meeting date to bargain over effects. Springer never replied to the request to bargain.

[4] As the judge found, the Union had requested and Prestige had agreed in September 1991 to arbitrate a grievance over Wells' discharge. However, Prestige never responded to the Union's request to contact the Union to select an arbitrator. On December 26, 1991, about 7 weeks after the facility had been taken over, Prestige's attorney Springer wrote Martin a letter regarding a settlement proposal, which the Union rejected.

The judge found, and the Respondents do not contest, that the Respondents never responded to the Union's requests to bargain over effects and therefore violated the Act by depriving the Union of any opportunity to bargain over such issues as severance pay, seniority, pensions, health insurance, job security, and other matters which might be affected by such a decision. However, the judge refused to order a *Transmarine* remedy, finding that the requested remedy has invariably been used in circumstances where the employees affected by the change have lost their jobs and has not been applied in cases where the affected employees have remained employed. The judge found that there was no showing that any employees lost their jobs as a result of the transfer or that employees suffered any out-of-pocket loss. We disagree with the judge.

In *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990), the Board found a *Transmarine* remedy warranted, reversing the judge's finding that the remedy was inappropriate where unit employees had suffered no palpable loss as a result of the respondent's failure to engage in timely effects bargaining. In finding that the employees had suffered financial losses as a result of the transfer, the Board found that the union might have secured additional benefits for employees, had the respondent bargained in a timely manner over effects. The Board noted that the union had immediately requested, on learning of the sale of the facility, that the respondent bargain over such issues as accrued leave benefits, severance pay, pending grievances, and payment of all wages and benefits due. The Board found that the parties had reached settlement on a grievance involving an employee, but that there were unresolved issues relating to that grievance which might have been resolved in timely effects bargaining. The Board also found that the parties' dispute over overtime pay might have been resolved in timely effects bargaining, had the respondent lawfully provided timecard and payroll records requested by the union.

We find *Live Oak* to be factually similar and legally controlling in the instant case. Here, the Union, when it learned second hand of the transfer, immediately requested bargaining over several issues which were in dispute between the parties, such as sick leave, overtime pay, a pending grievance, and payment of other wages and benefits due. As in *Live Oak*, the Respondents rebuffed the Union's attempts to resolve those issues at a time when the Union might have secured additional benefits for employees had the Respondents bargained in a timely manner over effects.

Further, we observe that the record does not support the judge's suggestion that no employees lost their jobs as a result of the transfer. The Respondents have unlawfully refused to provide a list of employee names to the Union, and the Respondents do not allege that all employees were reemployed by the Shieldses. It is therefore unknown whether all former bargaining unit employees were hired by the Shieldses. That question could have been resolved had the Respondents lawfully provided the requested information, but they did not. Under these circumstances, we are reluctant to find that the General Counsel failed to show that any employees lost their jobs, as the judge suggested.

Accordingly, we find that a limited backpay remedy as set forth in *Transmarine* is appropriate in order to give employees some compensation for their losses and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondents.

4. The General Counsel contends in his exceptions that Chartham is jointly liable for Richmond's unfair labor practices because Chartham was a single employer with Richmond. We find no merit to this contention because the evidence of the relationship between these two entities failed to establish that they constituted a single employer under the Board's four-factor test during the relevant time period.

The unfair labor practices for which the General Counsel would have found Chartham liable on a single-employer theory are all alleged to have occurred after June 1, 1991. The test for single-employer status therefore logically applies only to the relationship between Chartham and Richmond after that date, and evidence of their relationship prior to that date would be relevant only to the extent it cast light on their subsequent relationship.[5]

Under the Board's long-established test, single-employer status is found when two nominally separate entities are actually part of a single-integrated enterprise so that, for all purposes, there is only a single employer. The Board's inquiry focuses on four factors: interrelations of operations, common management, centralized control of labor relations, and common ownership. None of these factors, alone, is controlling, nor need all of them be present, as single-employer status ultimately depends on all the circumstances of the case. *Hydrolines, Inc.*, 305 NLRB 416, 417 (1991); *Emsing's Supermarket*, 284 NLRB 302 (1987), enfd. 872 F.2d 1279 (7th Cir. 1989). However, the Board has determined that the first three factors are of particular importance, especially the centralized control of labor relations. Id.

Applying these factors to the instant case, we find that Chartham and Richmond were not a single employer at the time of the unfair labor practices or at any relevant time thereafter. Richmond and Chartham

[5] We note also that the General Counsel has not asserted that Chartham was an alter ego of, or single employer with, Prestige, so therefore there is no basis for finding that the actions of Prestige under the post-June 1 management were attributable to Chartham other than indirectly through Richmond.

have shared common ownership and a sole director and officer at all relevant times. Chartham ceased managing the facility on June 1, 1991. There is no evidence pertaining to the control of labor relations for Chartham after Chartham ceased managing the Richmond facility and there is no showing of any significant interrelation of operations after that time. Thus, although some records of Richmond have been stored at Chartham's office, there is no evidence of employee interchange or commingling of funds, centralized administration, transfers of equipment, or any other financial integration. There is no common control over day-to-day operations. Chartham has offices in Boise, Idaho, and Los Angeles, California, as well as Oregon; it has its own director of operations; and it is engaged in other separate, distinct business enterprises, such as managing leasing companies and processing offshore workers' compensation claims. Richmond operated only the Richmond facility, with its sole office in Richmond, and no longer employs any employees.

In sum, we find that the common management and ownership of the two companies were the only factors present during the relevant time periods. Common control of labor relations, a factor considered by the Board to be of particular significance in establishing a single-employer relationship, has not been shown. In view of the absence of any other indicia of single-employer status, we find that the common management and ownership of Richmond and Chartham are insufficient to establish a single-employer relationship. See *Frank N. Smith Associates*, 194 NLRB 212, 217–219 (1971).

As Chartham was not a single employer with Richmond during the relevant time period, we agree with the judge that Chartham is not jointly liable to remedy the unfair labor practices found.

AMENDED REMEDY

In addition to the remedy provided for in the judge's decision, we shall order the Respondents jointly and severally to restore the employees' health insurance coverage and make the employees whole by reimbursing them for any expenses ensuing from the Respondents' failure to make the required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), the amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Having found that the Respondents violated Section 8(a)(5) and (1) of the Act by failing and refusing to remit to the Union dues checked off, we shall also order the Respondents to make the Union whole for the Respondents' failure to abide by their obligation under the dues-checkoff provision in the contract, also with interest computed as described above.[6]

Finally, we shall order that the Respondents pay limited backpay to the employees in accordance with the Board's remedy in *Transmarine Navigation Corp.*, supra, 170 NLRB 389, 390, by requiring that the Respondents pay unit employees at their normal rate of pay beginning 5 days after the Board's decision until the first of four events: (1) the date the Respondents bargain to agreement with the Union on those subjects pertaining to the effects of the transfer of the facility on employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondents' notice of desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the November 1, 1991 takeover of the facility to the time they secured equivalent employment elsewhere, or the date on which the Respondents shall have offered to bargain in good faith, whichever occurs sooner, provided, however, that in no event, shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondents' employ. Backpay shall be based on earnings which the unit employees would have normally received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondents, Richmond Convalescent Hospital, Inc., Richmond, California, and Prestige Health Care of California, Inc., Bedford, Texas, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to bargain in good faith with Hospital and Health Care Workers Local 250, Service Employees International Union, AFL–CIO by refusing to provide to it a seniority list and related information, by refusing to bargain with it over the effects of the transfer of ownership which occurred in November 1991, and by refusing to join with that labor organization in selecting an arbitrator to decide contract disputes after agreeing that such disputes should be submitted to arbitration.

(b) Discharging employees or otherwise discriminating against any employee with respect to his or her

[6] We leave to the compliance stage of this proceeding any issues arising from the November 1, 1991 takeover of the facility by the Shieldses.

hire or tenure because they have supported, have been a steward for, or acted on behalf of the Union or any other labor organization.

(c) Failing and refusing to pay health plan premiums in accordance with the applicable collective-bargaining agreement.

(d) Failing and refusing to remit dues checked off pursuant to the applicable collective-bargaining agreement.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, immediately provide to the Union a seniority list as of October 4, 1991, showing the following information: a list of employees employed in the bargaining unit, by department, which includes their hire date, their employment status, and the shift to which they were assigned.

(b) On request, bargain in good faith with the Union with respect to the effects the November 1991 transfer of the facility to Willie M. Shields and Cecelia Marie Shields may have had on the employees' wages, hours, and terms and conditions of employment.

(c) Pay limited backpay to the unit employees in the manner set forth in the amended remedy section of this decision.

(d) Offer Maria Wells immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges she previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the amended remedy section of this decision.

(e) Remove from their files, and ask the Shieldses to remove from their files, any reference to the unlawful discharge of Maria Wells and notify her in writing that this has been done and that the discharge will not be used against her in any way.

(f) Restore the unit employees' health insurance coverage and make unit employees whole, in the manner set forth in the amended remedy section of the decision.

(g) Remit to the Union dues checked off pursuant to the provisions of the collective-bargaining agreement and valid authorizations, and required by the agreement to be turned over to the Union by the Respondents, in the manner set forth in the amended remedy section of this decision.

(h) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of payments due under the terms of this Order.

(i) Post at or cause to be posted at the facility located at 1919 Cutting Boulevard, Richmond, California, signed copies of the attached notice marked ''Appendix.''[7] Copies of the notice on forms provided by the Regional Director for Region 32, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that it is not possible to post the notice at the facility in question, the Respondents shall cause signed copies of the notice to be mailed to all employees on the payroll of the facility on November 1, 1991.

(j) Notify the Regional Director for Region 32 in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

IT IS FURTHER ORDERED that the consolidated complaint be dismissed as to Chartham Management, Inc., and that it be dismissed as to all allegations not specifically found to be violations of the Act.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to bargain in good faith with Hospital and Health Care Workers Local 250, Service Employees International Union, AFL–CIO by refusing to provide to it a seniority list and related information, by refusing to bargain with it over the effects of the transfer of ownership which occurred in November 1991, and by refusing to join with that labor organization in selecting an arbitrator to decide contract disputes after agreeing that such disputes should be submitted to arbitration.

WE WILL NOT discharge employees or otherwise discriminate against any employee with respect to his or her hire or tenure because they have supported, have been a steward for, or acted on behalf of the Union or any other labor organization.

WE WILL NOT fail and refuse to pay health plan premiums in accordance with our collective-bargaining agreement with the Union.

WE WILL NOT fail and refuse to remit dues checked off pursuant to our collective-bargaining agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, immediately provide to the Union a seniority list as of October 4, 1991, showing the following information: a list of employees employed in the bargaining unit, by department, which includes their hire date, their employment status, and the shift to which they were assigned.

WE WILL, on request, bargain in good faith with the Union with respect to the effects the November 1991 transfer of the facility to Willie M. Shields and Cecelia Marie Shields may have had on the employees' wages, hours, and terms and conditions of employment.

WE WILL pay limited backpay to the unit employees for the period specified by the National Labor Relations Board, with interest.

WE WILL offer Maria Wells immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges she previously enjoyed, and make her whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, less any net interim earnings, plus interest.

WE WILL remove from our files and WE WILL ask the Shieldses to remove from their files any reference to the unlawful discharge of Maria Wells and notify her in writing that this has been done and that the discharge will not be used against her in any way.

WE WILL restore the unit employees' health insurance coverage and make unit employees whole, with interest.

WE WILL remit to the Union dues checked off pursuant to the provisions of the collective-bargaining agreement and valid authorizations, and required by the agreement to be turned over to the Union by us.

RICHMOND CONVALESCENT HOSPITAL, INC.

PRESTIGE HEALTH CARE OF CALIFORNIA, INC.

Ariel Sotolongo, Esq., for the General Counsel.
James M. Nelson (Diepenbrock, Wulff, Plant & Hannegan), of Sacramento, California, for Respondents Richmond Convalescent and Chartham Management, Inc.
Paul D. Supton (Van Bourg, Weinberg, Roger & Rosenfeld), of San Francisco, California, for Charging Party Local 250.

DECISION

STATEMENT OF THE CASE

JAMES M. KENNEDY, Administrative Law Judge. This case was tried before me in Oakland, California, on February 23, 1993, on a consolidated amended complaint issued on July 6, 1992, by the Acting Regional Director for Region 32 of the National Labor Relations Board. The consolidated complaint is based on a charge filed by Maria Wells, an individual, on September 9, 1991, amended on July 2, 1992, and a charge filed by Hospital and Health Care Workers Local 250, Service Employees International Union, AFL–CIO (the Union) on December 26, 1991, and twice amended, the last on March 13, 1992. It alleges that Richmond Convalescent Hospital, Inc., Chartham Management, Inc., and Prestige Health Care of California, Inc. have committed certain violations of Section 8(a)(5), (3), and (1) of the National Labor Relations Act (the Act).

Issues

The unfair labor practice issues to be decided are whether Respondent(s) violated Section 8(a)(5) and (1) of the Act by failing to remit to the Union moneys which it had deducted from the employees' paychecks for the purpose of paying their union dues under the union-security clause of a collective-bargaining agreement and whether it breached the bargaining obligation by failing to make health care plan payments on behalf of the unit employees as required by the collective-bargaining agreement and Section 8(d) of the Act. Furthermore, the complaint alleges that Respondent(s) failed to provide the Union with certain information such as a seniority list and connected matters, material regarding Respondent(s)' alleged failure to make health plan payments, an alleged failure to remit dues to the Union, and declining to send the Union a copy of the sales contract between Respondents Prestige and its ''predecessor'' Chartham.[1]

[1] The evidence actually shows that there were never any agreements between Chartham and Prestige. These two entities never had any relationship whatsoever. They were both hired by Respondent Richmond to perform the same task during different time periods.

The complaint also asserts that on or about November 1, 1991, Respondent(s) transferred ownership of the business to Willie M. and Cecelia Marie Shields and that Respondent(s) failed and refused to give the Union sufficient notice of the transfer to afford it the opportunity to engage in meaningful negotiations concerning the effects of the transfer.

Finally, the complaint alleges that Respondent(s) violated Section 8(a)(3) and (1) of the Act by its discharge of employee Maria Wells and violated Section 8(a)(5) and (1) of the Act when it failed to respond to the Union's request to submit Wells' discharge to binding arbitration under the terms of the collective-bargaining agreement. It goes on to assert that when taken together the foregoing conduct constitutes a repudiation of the contract and withdrawal of recognition of the Union.

The case is complicated by the fact that two of the entities which owned and/or operated the business at various points are related to one another, yet others are not. The General Counsel has asserted that Respondent Richmond and Respondent Chartham are a single employer under the Act and that those two entities later became joint employers with Respondent Prestige. As will be seen, Respondents Richmond and Chartham filed an answer and appeared at the hearing; Prestige neither filed an answer nor appeared.[2] Nonetheless, Respondents Richmond and Chartham assert that they are not responsible for the unfair labor practices, all of which occurred during the time when Prestige managed the facility.

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Both the General Counsel and Respondents Richmond and Chartham have filed briefs which have been carefully considered. Based on the entire record of the case, as well as my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

At the hearing Respondents Richmond and Chartham conceded that the business in question, a skilled nursing home-convalescent hospital facility, meets the Board's discretionary standard for the assertion of jurisdiction over nursing homes. Thus, the employing entity or entities, whatever it or they may be, qualifies as an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The answer admits the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

As previously alluded to, all the Respondents have been involved, in one role or another, in the operation of the nursing home in question, located at 1919 Cutting Boulevard in Richmond, California (the facility). During the material time period, the latter half of 1991, the Union was the Section 9(a) representative of a bargaining unit of employees at the facility. These employees include licensed vocational nurses, nursing assistants, housekeepers, cooks, and the like. The then-current collective-bargaining agreement covering these employees at the facility was effective from September 1, 1990, through August 31, 1992. Nancy Herrera, the Union's field representative who negotiated the contract on the Union's behalf, testified that negotiations had actually begun sometime in September 1990 and were concluded in October 1990. However, the contract was not actually signed until April 22, 1991. On that date it was executed solely on behalf of Respondent Richmond by its president, Don R. Bybee. Indeed, the signature of the union official who signed it is dated even later, May 20, 1991. Herrera testified that the reason for the delay was Bybee's request that he be given time to review it. That delay is consistent with the terms of the Richmond-Chartham management contract quoted below.

Although Bybee signed on behalf of Respondent Richmond, that company did not appear to be actively managing the facility at the time. According to Bybee, and supported by the management agreement between Richmond and Chartham dated August 1, 1989, Chartham had for some time been the day-to-day operator of the business. That contract, signed by Bybee on behalf of both corporations, described Richmond Convalescent Hospital, Inc., an Oregon corporation, as the ''Owner.'' It also described Chartham Management, Inc., also an Oregon corporation, as the ''Manager.''

The manager's duties are described in great detail beginning on page 2 of that agreement. In addition, at least one portion of that section declares the owner to be the employer of the employees working at the facility. I quote the pertinent portion:

> *MANAGER'S DUTIES*
>
> During the period commencing with the opening date and continuing until the termination of this agreement, which period is hereinafter referred to as the operating period, the Manager shall use its best efforts in the management and operation of the business, services and sales of the Facility so that the Facility and its services will be operated and maintained with the maximum of profit and in a first quality manner and so that the Facility shall remain a first quality convalescent center. In pursuance of the foregoing, the Manager shall perform the following services:
>
> . . . .
>
> 2) Employ, at the expense of the Owner, such resident administrator, assistant administrators, employees, agents, clerks and staff at the Facility as may be required to continue the standard and quality

[2] I denied the General Counsel's motion under Board Rule 102.20 seeking what is essentially a default judgment against Respondent Prestige. I based the denial on the General Counsel's contention that Prestige was a joint employer with Respondents Richmond and Chartham. Because all three were alleged to be joint employers, their answer would also speak for Prestige, at least to the extent that an appropriate answer had been filed.

> of management and operation at a level not lower than that heretofore maintained. Except for the administrator, as hereinafter provided, *all of such employees shall be on the Owner's payroll and the Manager shall not be liable to such employees for their wages or compensation, nor shall the Manager be liable to the Owner or others for any act or omission on the part of such employees, unless the Manager has failed to use reasonable diligence in their hiring, discharge of supervision so as to maintain a staff of qualified, competent, and trustworthy employees. The Owner shall have the right to discharge, or require the Manager to discharge, any such employee. The Manager will negotiate, on the Owner's behalf, with any labor union lawfully entitled to represent such employees, but no collective bargaining agreement or labor contract resulting from such negotiations shall be valid unless executed by the Owner*. The Manager will not at any time enter into any agreement with any employee for a period in excess of one year or for compensation in excess of $50,000 per year without the consent in writing of the Owner. The Manager shall procure and maintain adequate workmen's compensation insurance, in the name of and at the expense of the Owner, covering all of the Owner's employees. [Emphasis added.]

As can be seen, Respondent Richmond reserved to itself the obligation to be the employer of the rank-and-file employees at the facility. It did delegate most matters to the manager, including the right to require the manager to negotiate any collective-bargaining agreement but only subject to the owner's approval. Indeed, almost all matters, even workmen's compensation insurance, was to be taken in the name and at the expense of the owner, Respondent Richmond.

Union Official Herrera testified that in 1990 the individual who negotiated the collective-bargaining contract on behalf of Richmond Convalescent was Dr. Norma Jackson, the Chartham administrator. Consistent with the terms of the management agreement, she never dealt with Richmond's Bybee, although Bybee subsequently signed it. Indeed, she said she never even met Bybee until well after negotiations had been concluded and that their meeting occurred over an unrelated matter.

Bybee testified that he owns and operates approximately 35 corporations, including Respondents Chartham and Richmond. He acknowledges that he is the president, sole director, and sole shareholder of Richmond. At the time of the hearing, that corporation no longer employed anyone and was not actively operating anything. He is also the president and secretary of Chartham as well as a director. He says he is one of Chartham's two shareholders: he owns some shares personally while the others are held by another Oregon corporation which he also controls.

As noted, the Richmond-Chartham management agreement is signed by Bybee on behalf of both corporations. Bybee says at the time he signed it, August 1989, Chartham employed about 35 employees. Headquartered in Salem, Oregon, it also had offices in Boise, Idaho, and Los Angeles, California. He described Chartham as a company which manages leasing companies, processes offshore workers' compensation claims, and manages real estate, including rental property and nursing homes.

Bybee says Chartham has its own director of operations, an individual named Brent Barraclough. He adds that Barraclough, whose office was in Salem, had no day-to-day responsibility over the facility; only Dr. Jackson, the administrator, did.

On June 1, 1991, Respondent Richmond, through Bybee, entered into another management agreement, this time with a California corporation called Prestige Health Care of California, Inc., the third Respondent. Bybee testified without contradiction that neither he nor any other of his corporations has any ownership interest in Respondent Prestige. He says Prestige is a corporation either owned or controlled by one Steve Ewing who has offices in Bedford, Texas. The management agreement between Respondent Richmond and Respondent Prestige was signed by both Bybee and Ewing.

That contract is nearly identical to the management contract which Richmond had earlier signed with Chartham. Indeed, the quoted portion of the Richmond Chartham agreement describing the manager's duties is virtually congruent with the language later found in the Richmond-Prestige management agreement (with two insignificant exceptions).

In June, on Richmond's signing of the management agreement with Respondent Prestige, Chartham disappeared from the scene. Prestige appointed its own administrator, one JoBeth Strawn. She rapidly took over operation of the facility. I note, in this regard, that until Respondent Prestige took over, paychecks were drawn on the account of Respondent Richmond, not Chartham. See the paystubs in evidence as General Counsel's Exhibit 17. However, on Respondent Prestige's takeover, paystubs began being issued in the name of ''Prestige Care Center of Richmond.'' There is nothing in the record to explain the difference in the names of the two Prestige entities.

Nonetheless, according to the newly signed management agreement, Respondent Richmond continued to reserve to itself the status of the direct employer of the employees, at least until October 1991 when foreclosure proceedings were begun against the facility by the Union Bank. In addition, it seems that Richmond's lease of the realty from Bybee was about to expire. Bybee could not remember the date of the expiration, saying that it was either June 1991 or November 1991. Bybee testified that he had personally signed a mortgage with the Union Bank covering the real and personal property of the facility.

In late October, Bybee says, two previous owners of the facility, and then-current holders of a second mortgage, Dr. Willie M. Shields Jr. and Cecelia Shields, appeared on the scene, apparently to protect their interests. Bybee says they had become aware of the facility's financial straits and made an arrangement with the Union Bank whereby Bybee would agree to relinquish both the property and the business to the bank and the bank would negotiate a new arrangement with the Shieldses who would then take over the facility. Bybee agreed. The arrangement released Bybee from the first mortgage to the Union Bank of approximately $1.4 million and from the second mortgage to the Shieldses of between $500,000 and $600,000.

B. *The Alleged Unilateral Changes*

The complaint asserts that the operator of the facility committed two unilateral changes of a material and substantial nature. These are the alleged failure to remit dues to the Union which had been deducted from the employees' paychecks. Section 3 of the collective-bargaining contract is a standard union-shop clause which requires employees in the bargaining unit after a 31-day grace period to tender periodic dues and initiation fees uniformly required by the Union as a condition of being employed. Section 4 of the contract provides that in the event an employee submits a voluntary written assignment of wages for the amount of his or her union membership fees, the employer would honor it and would ''promptly remit the money deducted pursuant to such an assignment'' to the Union, together with a written statement of the names of employees for whom the deductions had been made.

The complaint asserts that since about June 1, 1991, Respondent(s) have failed to remit the money deducted from the employees' paychecks to the Union. Furthermore, it asserts that on about October 11, 1991, Respondent(s) discontinued deducting union dues from the paychecks.

In support of these allegations the General Counsel called the Union's assistant controller, Maggie Murphy. Murphy did not provide any firsthand knowledge of the circumstances, but pointed to a ledger card which the Union maintained for Richmond Convalescent Hospital, Inc. (G.C. Exh. 5.) She testified that such ledger cards are maintained for those employers who remit employees' dues which have been deducted from their paychecks. Each time an employer sends such dues to the Union, an entry is supposed to be made by hand on the card for the appropriate month. As noted, the employer is to submit a list of names of the employees for whom the dues are being paid. The Union uses that list to mark those employees as paid for the month in question. Murphy said that if an employer fails to send in the dues, no entry is made on the card and the month in question is left blank.

General Counsel's Exhibit 5, however, did not follow that particular procedure. Originally created as a ledger card for the year 1991, it has been modified to include portions of both 1991 and 1992. With respect to 1991 it shows that the January and February dues were paid in May and that the March, April, May, and possibly June dues were paid on July 9. A heavy black line has been drawn between the preprinted months of May and June and the year ''1992'' has been interlineated at that point. A handwritten note in ''remarks'' says: ''4 thru 6–91.'' Although that could mean the months of April, May, and June, another entry date-stamped July 9 shows some credit for March. The testimony also shows that the entry for June is actually two entries, one for July 9, 1991, and another for August 17, 1992. Those two entries are nearly illegible due to the fact that the second date has been written over the top of the first. In any event, the card shows that on July 9, 1991, Respondent Prestige sent the Union checks for approximately $2000 to cover certain dues. It contains a note that the checks were not accompanied by a printout or list of employee names. In the space for June, there is also an entry showing that a payment of $1,628.55 had been received. It is unclear to what that entry relates, for the date July 9, 1991, has been overwritten as August 17, 1992. A further lack of clarity results from the fact that the July 9 entry appearing for May and June are bracketed together despite the heavy black line.

Whatever significance that ledger card may have, Murphy was able to testify only that she regarded the ''account'' as being delinquent because there were no 1991 entries appearing after July 9 of that year. Also on the card is a label which originally listed Richmond Convalescent Hospital as the employer together with Chartham Management. The label now contains a strikeout of the words ''Chartham Management'' with the handwritten replacement: ''Prestige Care/Shields.'' It is a most confusing card. Murphy's testimony does little to clarify it.

Neither Murphy nor any other union official testified that the Union had ever sent Prestige or Richmond a notice of arrearage or a demand for payment. Respondents Richmond and Chartham's answer to the complaint denies failing to remit the dues. Yet the card itself appears to be the Union's admission that dues were remitted on July 7, 1991, about 6 weeks after the complaint alleges that dues stopped being sent. Furthermore, the three paystubs which are in evidence, General Counsel's Exhibit 17, show that union dues were being deducted from the paychecks of at least one employee during the months of June and July.

Union Field Representative John Martin testified that he had been assigned to talk to some employees who had become delinquent. He says when he spoke to them, they told him the dues money had been taken from their checks and asked him what the Union was doing with his or her money. Martin testified, ''And then I would go to the Administrator [Strawn] and say, 'Well, what are you doing with our money? You are not forwarding it to the Union, but you are deducting it from everybody's paycheck.' And they had done it more than once, apparently. And it was kind of a messy situation. And we were trying to, hopefully, help the business department get it straightened out. Get everybody a little calmed down about where their dues money was at.''

Yet Martin never testified what the administrator's response was, if any, to his question. There is no other evidence with respect to the dues remittance allegation.

Frankly, it is my opinion that the state of the evidence here is inadequate to demonstrate that Respondent(s) ceased remitting the dues as alleged in the complaint. The ledger card on its face shows that dues were in fact paid in July, although credited to the months of March, April, May, and perhaps June. The only evidence showing that no payments were made thereafter is a supposed absence of entries after June 1991. Yet even the absence is not clear from the card because it has been usurped by 1992. Even without that confusion, the absence of a handwritten entry on a ledger card would be insufficient evidence to demonstrate that payments have not been made had the card otherwise shown no irregularities. Yet on its face this card is decidedly irregular and I cannot conclude based on the card alone that dues were not being remitted. In fact, given the state of the paystubs, showing that dues were actually being deducted from at least one employee's paycheck, it would be more logical to conclude that they were being deducted for the purposes of remittance and that remittance is more probable than not.

Whatever meaning the card may have, it would have been a simple matter for the Union to have sent letters to the Employer claiming an arrearage and demanding payment. It did not. Moreover, no union official testified to an employer admission that the dues were not remitted. Accordingly, I conclude that the evidence is insufficient to show that Respondent(s) failed to remit dues beginning in June 1991.

With respect to the contention that Respondent(s) stopped deducting dues altogether in October 1991, there is absolutely no evidence whatsoever in the record dealing with that issue. Accordingly, it too must be dismissed.

The other alleged unlawful unilateral change is the contention that beginning on June 1, 1991, Respondent(s) failed to pay premiums to the health insurance company, Kaiser Permanente, a health maintenance organization.

Field Representative Martin testified that he learned in the early fall of 1991 from one of the employees that Kaiser Permanente was refusing to pay a claim being made by an employee who had a family member suffering from a terminal illness. He says he went to investigate the matter and spoke with Administrator Strawn who acknowledged that Respondent Prestige was in arrears at the time. In late October, however, Strawn showed Martin a letter from Kaiser directed to Prestige acknowledging that the May, June, and July payments had been made and the health plan had been reinstated. The letter also contained a threat that in the event the payments for August, September, October, November, and December were not paid by November 15, 1991, the account would be terminated again, effective September 1, 1991. The letter, in evidence as General Counsel's Exhibit 12, is proof both that Respondent Prestige had been in arrears but also that it had made a sufficient payment to satisfy the arrearage. There is, however, no proof whatsoever regarding what happened thereafter. It is not known whether subsequent payments were made, whether the insurance lapsed as Kaiser threatened, or whether payment was timely made on November 15.[3]

Again, the evidence is insufficient to make out a violation of Section 8(a)(5) and (1). Late payments to insurance companies are not violations of the Act. Accordingly, this allegation must be dismissed.

C. *Maria Wells*

Maria Wells was hired in January 1990 and was discharged on September 4, 1991. She had become the Union's shop steward in April 1990 and worked at the facility as a certified nurses assistant. Her normal line of authority was to report either to the charge nurse on her floor or to the director of nursing. She continued to be the Union's steward from her April 1990 appointment through her discharge in September 1991.

She regards her direct employer as first being Chartham, followed by Prestige in July 1991. She remembers sometime in July new Administrator Strawn called her to the office to tell her that there was about to be a changeover, but said Strawn never actually mentioned the name of the company which was taking over. On the day the name ''Prestige'' was actually brought to the employees' attention, Wells was on her day off. Beginning July 5 Wells, in her capacity as shop steward, began to deal regularly with Strawn. Resolution of grievances at the early stages was one of Wells' principal priorities. She even remembers that the first grievance dealt with a change in paydays.

On July 25, she and Martin met with Strawn to try to resolve the question of the payday change as well as some apparent short pay claims. It was on this occasion that she first became aware of Prestige's corporate president, Steve Ewing. Strawn had arranged for Ewing to participate in the meeting from Texas via speakerphone and Wells was present as Martin and Ewing discussed the grievance. Later, on August 2, again while on her day off, she had her own conversation with Ewing regarding paydays. She testified that Ewing called her at home to advise her of a proposed change. She remembers responding that he needed to give her a full 10 days' notice before instituting such a change and the notice he was giving her was insufficient.

Wells says between July and her discharge in September, she met with Strawn approximately 15 to 20 times per month either regarding grievances or being present while an employee was being disciplined.

In August, Wells became aware of some difficulties involving the laundry room's inability to consistently distribute clean laundry to the various departments. She concluded that there was not sufficient personnel to get the laundry distributed properly. Such problems occurred approximately six times between August 15 and September 4.

September 4 was a day on which Ewing visited the facility. On that day a laundry employee reported to Wells that Ewing was in the building and asked Wells if she would speak to him about the laundry problem.

Accordingly, Wells introduced herself to Ewing and asked him to accompany her while she showed him the problem. The two went to the laundry where she showed him stacks of clean towels, linens, and clothing piled to the ceiling. She remarked that not only was there not enough manpower to distribute it, but the status of the laundry room constituted a health code violation if it were to be discovered during a health department inspection. She also told him she regarded it as a fire hazard. Wells says Ewing told her he would take care of the matter, but gave her what she described as a ''hard look.'' Their tour of the laundry area ended about 12:45 p.m.

Prior to that date, Wells had normally worked a shift which began at 6 a.m. and ended at 2:30 p.m. That shift differed by an hour from the shift normally worked by other day-shift employees. Their shift was from 7 a.m. to 3:30 p.m. Two years previously Wells had been given the different shift to accommodate a school schedule. However, her school needs were not consistent and she often had time in the afternoon to discuss or participate in grievance matters after her shift ended.

Shortly before her shift ended that afternoon, at approximately 2:25 p.m., Strawn called Wells to her office. Nursing Director Nanny Bonner was also present. Strawn told Wells she was being terminated because she had not changed her shift. Before Strawn could go further, Wells left the room to obtain the presence of a steward. She returned a short time later with two of them. Strawn resumed saying the shift change had been posted, but Wells had not honored it. Bonner contended that the Company had advised Wells of the shift change some 3 weeks before. Wells replied she had not been present at the facility 3 weeks previously, because she was off on the days in question with a bad ankle. Moreover, Wells asserted that the change had not been posted and that her shift hours had not been modified.

[3] Elsewhere in this decision, I note that the facility was transferred to the Shieldses on or about November 1.

At that point one of her fellow stewards took over and obtained Wells' agreement to change her shift if the Company would withdraw its decision to terminate her. According to Wells, the matter was resolved with the conclusion that she would not be fired but would change her shift to begin at 7 a.m. and work until 3:30 p.m. on her next scheduled workday, after her weekend off. The meeting ended at 2:50 p.m.

Shortly thereafter at 3 p.m., pursuant to a prior arrangement, Wells met Martin and the two of them conducted a meeting with the laundry manager and a laundry employee. The meeting actually took place in Strawn's office, although Strawn was not present, having given them the office for that purpose.

The meeting was interrupted by employee Janet Taylor who advised that she had just overheard a conversation between Ewing and Strawn in which Ewing had given Strawn a specific direction to discharge someone. Although the person's name was not mentioned, Taylor had concluded that they were speaking about Wells and had come to tell Wells and Martin what she had heard.[4]

Shortly after the meeting was over, Strawn reclaimed her office and asked to speak to both Martin and Wells. Strawn then told Wells she was being terminated and gave her a termination slip. The slip asserts that Wells was being discharged because of her ''Refusal to report to work at the scheduled shift beginning 7–3:30 p.m.'' Wells declined to sign it, and Martin wrote on it that the discharge was being protested as the accusation was incorrect.

There is no evidence that anyone else was terminated on that day and at that hour.

The foregoing evidence demonstrates that the General Counsel has made out a prima facie case that Wells' discharge was for reasons prohibited by Section 8(a)(3) and (1) of the Act. She was a union steward who took her duties seriously and actively worked on behalf of the employee staff. She was involved early with Ewing in the payday change and the short paycheck matters; on one occasion she told Ewing that the contract required 10 days' notice to change paydays, and his notice to her was insufficient. On the day of her discharge, in her capacity as a steward, she led him on a tour of the laundry and presented evidence that there was both insufficient manpower to perform the job and that a hazard existed which could conceivably result in a citation from the health or fire departments. Clearly, she presented herself as a union official who would likely become a ''whistleblower'' if those shortcomings were not remedied. Although Ewing said nothing to her at the time, his demeanor was that of someone who was annoyed.

The laundry tour was followed almost immediately by Strawn's notification to her that she was being discharged. When Wells, assisted by two other stewards, pointed out that the reason being given for the discharge was not supportable, Strawn recognized the flaw immediately, backed away, and allowed Wells to adjust her schedule to accommodate the shift change. However, within half an hour, the decision to discharge Wells was reinstated. Because no one else was being fired that day, Taylor's testimony that she overheard Ewing telling Strawn that an individual was to be discharged and that there were to be ''no buts about it'' clearly demonstrates that in discharging Wells, Strawn was not acting on her own, but on the direct orders of an unhappy corporate president. The only cause which Wells had given him to be unhappy was her pointing out the insufficient manpower and condition of the laundry room and observing that it was a hazard.

Ewing no doubt perceived her stewardship as a threat and determined to discharge her. The excuse which he and Strawn used, Wells' alleged refusal to change her hours, is not sustained by any evidence whatsoever. Accordingly, I conclude that the reason which Strawn advanced and which appears on the termination slip is a pretext. As a pretext, the element of union animus is present and the General Counsel has presented a strong prima facie case that Wells was discharged because she was a union steward, a violation of Section 8(a)(3) and (1). Furthermore, that prima facie case stands unrebutted. Accordingly, I conclude that Wells was discharged in violation of the Act as alleged in the complaint.

D. *The Failure to Arbitrate Wells' Grievance*

On September 5, 1991, Field Representative Martin filed a grievance covering Wells' discharge. It asserted that Wells had been ''unjustly terminated'' and that various sections of the collective-bargaining contract had been breached. He sought reinstatement with backpay and no loss of seniority. He hand delivered that document to Strawn.

Martin testified that he thereafter had about four conversations with Strawn over Wells' discharge. Early on, she referred him to Prestige's office in Texas. He eventually spoke with an attorney named Bettye Springer. In the course of this pursuit, he talked to Springer several times. He says Springer agreed to arbitrate the matter. On September 16, 1991, Martin wrote Strawn a letter in which he confirmed the Union's understanding that the grievance over Wells' discharge would be submitted to arbitration by mutual agreement and asked that Strawn have Springer contact his office so an arbitrator could be selected.

Because the contact was never made, no arbitrator was ever chosen. Yet, on December 26, 1991, Springer wrote Martin a letter transmitting a settlement proposal. This letter was sent about 7 weeks after the facility had been taken over by the Shieldses. By telephone, Martin rejected the proposal (testifying that Springer's letter was inaccurate with respect to the backpay amounts which Wells was willing to consider). Martin left the Union's employment at the end of the year and was therefore not involved in any further communications between the Union and the operators or former operators of the facility. It is undisputed that no arbitration ever occurred covering Wells' discharge.

E. *Other Bargaining Issues*

On October 4, 1991, Martin sent Strawn a letter asking for a ''seniority list for each department under Local 250's jurisdiction.'' He also wanted the full name, hire date, and seniority date, as well as other information such as whether they were full-time, regular part-time, on-call, per diem, short

[4] Taylor testified that on September 4 sometime between 3:30 and 4 p.m., she had been in the front dining room where she overheard Ewing and Strawn speaking together. She said she heard Ewing ask Strawn ''if she did it?'' and Strawn had replied, ''Yes, but . . . .'' Ewing interrupted telling Strawn, ''No buts . . . . You make sure, when you terminate her, you make sure you have her paycheck ready.''

hour, probationary, temporary, or occasional employees. He asked that the material be sent to him by October 15. He testified that there were two reasons for sending the letter. First, he said the Union wanted to ''get current'' on who was actually employed at the facility. Second, he said there were some dues problems which an up-to-date roster could help straighten out. In this respect he was referring to the asserted problem of nonremittance of dues which has been discussed in a previous section of this decision.

Martin says that after he sent the October 4 letter, he had about seven conversations with Strawn regarding a roster. Her oral response was that she did not have sufficient clerical staff to prepare one and therefore would not do it unless she was specifically authorized. He never got a written reply.

On October 15, 1991, Martin sent Ewing a certified letter to his office in Texas. The letter principally dealt with the arrearage to the health insurance carrier but obliquely referred to his belief that dues were not being forwarded promptly. He also asked for a copy of the sales contract between Prestige and Chartham saying that if Ewing's company had assumed the debts and liabilities of Chartham, then it might be liable for earlier health plan premiums. He concluded asking for ''a complete breakdown from your office as to who has had dues deducted from their checks and also who has had health and welfare contributions deducted from their paychecks.'' Martin says Ewing never responded. However, the health insurance issue was resolved as described above.

On November 5, 1991, Martin wrote Ewing another letter listing five items which he wished to discuss. The first was ''Effects Bargaining—Over Sale of Facility.'' In the first paragraph, he asked for a meeting to bargain over the effects of the sale of the facility, apparently to the Shieldses. The letter is quite short and immediately refers to four other topics, ''dues refund,'' ''Kaiser health plan [refund],'' Wells' arbitration and some issues involving overtime pay, short pay, and sick leave. These are not described with any particularity. Indeed, the reference to a dues refund and a Kaiser refund are not discussed at all elsewhere in the record. Martin testified that he had written the letter, because he had learned from Dr. Shields that he was going to be taking over the facility. No one from any of the three Respondents ever informed the Union that a transfer was in progress.[5]

Martin testified that in response to the November 5 letter, Attorney Springer called him and he told her they had a lot of outstanding issues which he would like to get resolved, including the change of ownership. He said Springer told him she knew only that her client was no longer going to be operating the facility and she would have to get back to Martin after she reached her client.

On November 26, Martin wrote Springer a letter requesting bargaining over the Wells matter as well as bargaining over the effects of the ''sale'' of Prestige to the Shieldses. In it he said that he was ''again formally requesting a meeting date'' with her regarding effects bargaining. He advised her that his schedule was open and asked her to inform him regarding her availability to negotiate. Martin said that although she did respond, as noted earlier regarding the Wells arbitration, she never answered his question about bargaining over effects. At one point, with respect to certain information which he had sought, Springer told him that the records were not available to Prestige because they were now in the hands of the new operators, which Martin knew to be the Shieldses.

IV. ANALYSIS

A. *Unilateral Changes*

Although I have earlier recommended the dismissal of two matters based on a factual analysis and found the discharge of Wells to be unlawful based on both factual and legal analyses, the following discussion relates to what are essentially peripheral issues involving the obligation to bargain in good faith. These are the requests to provide a seniority list, the alleged obligation to arbitrate Wells' discharge, and the question of bargaining over the effects on the employees of the transfer to the Shieldses. In addition, it is necessary to discuss which of the entities is liable for what type of violation.

With respect to the seniority list, the evidence shows that Union Field Representative Martin demanded production of such a list by his letter of October 4, 1991. In that letter he asked not only for the names and hire dates of employees, but their seniority dates if different, as well as the location where the employee worked, his or her shift, and whether they were full-time, part-time, or some other category of employee. The Board, of course, has held that a request for such information is presumptively relevant to the collective-bargaining process and an employer's failure to provide that material in a timely way will be regarded as a breach of the collective-bargaining obligation. As the presumption has not been rebutted, I have no difficulty in finding that Strawn's refusal, on the grounds that she had neither sufficient clerical support nor would she do so without being authorized by Ewing, to be a violation of Section 8(a)(5) and (1) of the Act.[6] *Safelite Glass*, 283 NLRB 929, 948 (1987); also *NLRB v. Acme Industrial Co*., 385 U.S. 431 (1967).

With respect to the obligation to arbitrate Wells' discharge, the General Counsel asserts that it is an unlawful unilateral change in the terms of the contract as breaching Section 8(a)(5) and (1) of the Act.

In general terms, I agree with the General Counsel. In her letter of December 26, 1991, Springer said that because her client no longer operated the facility, ''He [Ewing] would not be able to reinstate Ms. Wells, if that were the ultimate decision of an arbitrator. Thus, we feel that Prestige Care Center's responsibility for Ms. Wells terminated on November 1, 1991, the date when operation of the center was transferred to other individuals.'' Clearly, Springer was wrong on the law. It may be that the transfer would end the period for

[5] According to Martin, the Shieldses own other health care facilities in the area and the Union has a collective-bargaining relationship with them. The conversation he had with Dr. Shields occurred during an October meeting with Shields at a convalescent hospital in El Cerrito. Martin says Shields told him, ''Don't tell anybody, but I am going to take over Prestige. But we are bargaining with the bank right now. We have a second mortgage that is on the Facility and we have got to bargain with the bank, so I don't know if it will clear. But if it does, we will be operating it again.''

[6] The request for employee social security numbers, included in the demand, bears no relevance to the collective-bargaining or representation process and is therefore not producible. *A-Plus Roofing*, 295 NLRB 967, 971 (1989). Moreover, it raises issues of privacy which no one has addressed. Accordingly, my finding a violation here does not include the obligation to provide the social security numbers of the employees in the bargaining unit.

which Wells might have been entitled to backpay in the event of a favorable decision by the arbitrator, but it certainly did not end Respondent(s)' obligation to arbitrate an incident arising during the term of a collective bargaining contract. Specifically, see *Nolde Bros. v. Bakery Workers Local 358*, 430 U.S. 243 (1977). Also *Indiana & Michigan Electric Co*., 284 NLRB 53 (1987).

Even so, the General Counsel's case is not clean. Section 20 of the collective-bargaining contract describes the grievance procedure. It is a three-step process, the first being an informal conference, the second an adjustment board, and the third, arbitration. The evidence clearly shows that the step-one informal conference followed rather quickly after Martin filed the grievance. However, there is absolutely no evidence that step two, resort to the adjustment board, was ever taken. If Martin is correct, that Springer agreed to go straight to arbitration, it may be determined one of two things occurred: one, Springer waived the second step or two that a separate agreement, apart from the contract procedures, had been reached. I conclude that the first is the more likely.[7]

The complaint alleges that Respondent Prestige breached the bargaining obligation by refusing and continuing to refuse to submit the discharge of Wells to arbitration or to respond to Martin's arbitration request of September 5, 1991. In reality, however, Respondent, through Springer, did agree to arbitrate. As noted, she even forwarded a settlement proposal to settle it short of arbitration. Respondent's actual misconduct was to fail to respond to the Union's request to assist in appointing an arbitrator. Of course, it may be argued that its failure to do so and a refusal to submit Wells' discharge to binding arbitration has the same practical effect. After all, in each situation the arbitration procedure is frustrated. Nonetheless, the evidence does not show that Respondent rejected arbitration as a means of resolving contract disputes at the facility. What it does show is that Respondent failed to reply to Martin's request to help choose an arbitrator.

Such conduct is a violation of Section 8(a)(5) and (1) of the Act and I so find. See *Massilon Publishing Co*., 212 NLRB 869, 873–874 (1974); *Independent Stave Co. [I]*, 233 NLRB 1202 (1977); and *Independent Stave Co. [II]*, 248 NLRB 219 (1980).

B. *Effects Bargaining—The Transmarine Remedy*

With respect to the allegation that Respondent(s) have failed to give the Union an opportunity to bargain over the effects of the ownership change, the evidence is clear. No one from either Respondent Prestige or Respondent Richmond ever advised the Union that the facility was being reclaimed by the Shieldses in a foreclosure proceeding. The only way the Union learned of it was by chance when Martin happened to learn of it from Dr. Shields while visiting him on other business. Martin immediately wrote a letter to Ewing on November 5 about the matter. In the meantime, apparently on November 1 (according to Springer's December 26 letter), the facility was returned to the Shieldses. Springer responded saying only that she would have to discuss the matter with her client. Martin followed up with an another letter on November 26. Thereafter, Respondent Prestige's only response on the subject was silence.

That refusal clearly deprived the Union of any opportunity to bargain over the circumstances of the employees whose employment status might be altered by such a decision. Obviously issues such as severance pay, seniority, pensions, health insurance, job security, and other matters are of relevance with respect to such a change. The Union has an obligation to protect bargaining unit members exposed to such dangers. Both the Board and the courts have found that an employer has a duty to notify its union of such a change and to bargain with it on request regarding the effects of those changes. See specifically *Transmarine Navigation Corp*., 152 NLRB 998 (1965);[8] *Interstate Tool Co*., 177 NLRB 686 (1969); *Summit Tooling Co*., 195 NLRB 479 (1972); *NLRB v. Royal Plating & Polishing Co*., 350 F.2d 191 (3d Cir. 1965); *Willamette Tug & Barge*, 300 NLRB 282 (1990). That doctrine was specifically approved by the Supreme Court in *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681 (1981). Accordingly, I conclude that Respondent(s) have failed to timely notify the Union of such a change to give it the opportunity to request bargaining over the effects of such a change.

The General Counsel seeks a limited backpay remedy as established in the *Transmarine* remand case. The purpose of such a remedy is to place, as best as can be done, the parties in a status quo ante position. That allows the union the opportunity to bargain from strength rather than be faced with a fait accompli and be forced to bargain from whatever weakness results from the unfair labor practice. The remedy has invariably been used in circumstances where the employees affected by an unlawful and significant change have lost their jobs. This not only includes fact patterns where the employer has gone out of business, but also where employers have eliminated shifts or made operational changes which resulted in employee layoffs. See for example *Fast Food Merchandisers*, 291 NLRB 897 (1988). However, it has not been applied in cases where the affected employees have remained employed. Here, Respondent(s) did not notify the Union that the facility was being transferred to the Shieldses in November 1991. Apparently the employees came to work on or about November 1, and found themselves employed by the Shieldses, rather than by Respondent Prestige or Respondent Richmond. Thus, there is no showing that any employee lost his or her job as a result of the transfer.

There is no suggestion that employees have suffered any out-of-pocket loss. Indeed, if a limited backpay remedy such as that set forth in *Transmarine* were granted, it would be totally offset by the interim earnings which the employees have acquired from the Shieldses. Therefore, I do not find that a limited backpay remedy under *Transmarine* to be appropriate. Nonetheless, Respondent(s) were obligated to bargain over the effects of the transfer on the unit employees. Accordingly, a traditional bargaining order will be entered. Even if this means the Union must bargain from a weak position, it is no weaker than it would have been had the change been properly noticed and bargaining conducted in a timely fashion. The employees would still have been hired

[7] This conclusion, of course, assumes that the collective-bargaining agreement in evidence, nominally between the Union and Respondent Richmond, actually bound Respondent Prestige. The issue is discussed more fully below.

[8] Modified in pertinent part, then remanded 380 F.2d 933 (9th Cir. 1967); decision on remand 170 NLRB 389 (1968).

by the Shieldses in exactly the same manner as they actually were. Thus, a *Transmarine* remedy would be a windfall for employees and would place the Union in a better position than it would have been had Respondent(s) acted lawfully. It is therefore not appropriate here.

C. *The Respective Liabilities of Respondent(s)*

The General Counsel has asserted in his complaint and has argued in his brief that the three Respondents here are interconnected in various ways. He asserts that Richmond Convalescent Hospital, Inc. and Chartham Management, Inc. are a single employer; then he contends that in June they became joint employers with Respondent Prestige Health Care of California, Inc. Other apparent entities whose names appear in this proceeding and who are somehow connected to the matter, such as Prestige Care Center of Richmond and the Shieldses, are not named as parties to the proceeding. Prestige Care Center of Richmond is the ''entity'' which appears on the paychecks after June 1. It may be that Prestige of Richmond is simply Respondent Prestige Health Care of California albeit inartfully placed on the checks. If in fact it is a separate entity, its role is undefined on this record. The omission of the Shieldses is somewhat curious as it is conceivable that they could be liable as a successor employer under the *Perma Vinyl/Golden State Bottling* doctrine.[9]

I think it is clear that during the entire time period Richmond Convalescent Hospital, Inc. was present, even though in the background. On two occasions, first with Chartham and then with Prestige, it signed management agreements in which it specifically reserved to itself the status of employer of the employees in question. It apparently did not wish to supervise the employees directly, but only indirectly through a hired manager. Thus, under those agreements, Richmond simply assigned its own supervisory functions to a management company.

There is no explanation for that particular practice in the record and I can only assume there must be some sort of balance sheet advantage to do so. Certainly it is an unusual method of managing a business and/or a complement of employees. This oddity did have the effect of terribly confusing both the employees and the Union with respect to who the true employer was. For example, even though Union Official Herrera knew she had signed a collective-bargaining contract with Richmond, her colleague Martin never quite understood it. He believed the contract was between the Union and Chartham. In fact, the dues ledger card shows the Union at one point regarded Chartham as the employer. So did union steward Wells. Yet, both Chartham and Prestige were simply buffers between Richmond, the true employer, and the employees.

I observe, however, that Chartham was relieved of its managerial duties in June 1991 when it was replaced by Prestige. It may well be true that Richmond and Chartham should be regarded as a single employer prior to that date. Nonetheless, there is no suggestion that Chartham continued to have any sort of managerial role thereafter.[10] None of the unfair labor practices was committed until after Respondent Prestige began its supervision of the facility.

As Bybee said, Chartham has other businesses elsewhere, including Oregon, Idaho, and California. Thus, although it may have been a single employer with Respondent Richmond during its tenure at the facility, once it departed and had no one involved in its operation thereafter, it cannot be held liable for the acts of its replacement. Accordingly, I conclude that because Respondent Chartham was removed from the scene by the time the unfair labor practices were committed, it is not responsible to remedy them. I shall recommend that Chartham be dismissed from the case.

The same cannot be said for Respondent Richmond. Its contract with Prestige clearly shows that it remained the direct employer of the employees in question. This can easily be distinguished from the ''leased employee'' fact pattern whereby an employer hires employees indirectly through a leasing company. That practice is commonly seen in the transportation industry and occasionally in the health care field. See for example *TLI/Crown Zellerbach Corp*., 271 NLRB 798 (1984) (drivers), and *Lee Hospital*, 300 NLRB 947 (1990) (anesthesiology department). Something similar has been seen in the janitorial service industry. See for example *Southern California Gas Co*., 302 NLRB 456 (1991). In those cases the principal employer had leased discrete portions of the business, usually by department. Despite the lease arrangement, the legal conclusion in each case turned on the facts. In cases where the putative joint employers ''shared and codetermined the essential terms and conditions of employment'' of the leased employees, a joint employer relationship was found. Where the test was not met, the proof failed. The test is specifically mandated now by the Board's adoption of the Third Circuit's holding in *Browning-Ferris Industries of Pennsylvania v. NLRB*, 691 F.2d 1117 (1982). That court's test was specifically adopted by the Board in *TLI/Crown Zellerbach*, supra, and I am bound to apply it here. Moreover, the essential terms and conditions referred to therein are defined in *Laerco Transportation*, 269 NLRB 324, 325 (1984). They are: hiring, firing, disciplining, supervising, and fixing the rates of remuneration.

Unlike those cases, Respondent Richmond didn't lease employees, it ''leased'' its supervisors. It hired the direct services of a supervisory staff (albeit through a separate legal entity), specifically retaining its own authority over the employees, even though it only rarely, if ever, directly exercised it. Owner Richmond acted instead through its hired manager, who did not formulate, but only carried out, the policies established by Richmond. Thus, the manager did not set wages: Richmond did by signing the collective-bargaining agreement with the Union. Similarly, Richmond only delegated the hiring and firing and disciplining processes to the manager's administrator in exactly the same way it would have had it directly employed its own administrator.

In that circumstance, I have no difficulty in finding the General Counsel's proof of a joint employer relationship to be insufficient. Instead, I find the actual employer to be Respondent Richmond. By the same token I find Respondent

[9] *Perma Vinyl Corp*., 164 NLRB 968 (1967), enfd. sub nom. *U.S. Pipe & Foundry v. NLRB*, 398 F.2d 544 (5th Cir. 1968); *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

[10] The only evidence to that effect is that on a few occasions Chartham's former administrator, Dr. Jackson, was seen conferring with Prestige's administrator, Strawn. Bybee asserts that Jackson was then playing only a small role as a ''consultant'' during and shortly after the transition period. There is no evidence to counter that assertion.

Prestige to be Richmond's agent. Thus, Respondent Richmond is liable, under the *respondeat superior* doctrine, for the acts committed by its agent, Prestige. This finding obviates the allegation that Prestige unlawfully failed to supply the Union with a copy of the June sales agreement between Chartham and Prestige. There was no June sale, because the only employer was Respondent Richmond. It simply substituted managers. Therefore no agreement could have been supplied.

Of course, at common law, if an agent committed a tort, even though he was acting in his principal's interest, he was nonetheless held separately liable for his own activity. See for example, *Restatement (Second) of Agency*, § 343. There, the writers of the *Restatement* stated the general rule:

> An agent who does an act otherwise a tort is not relieved from liability by the fact that he acted at the command of the principal or on account of the principal . . . .

Similarly Section 348 A, dealing with trespass to land makes the identical point:

> An agent who enters the land of another is not relieved from liability for trespass by the fact that he acted on account of the principal and reasonably believed that the principal had possession or the right to possession of the land, or the right to authorize the agent to enter.

The Board, although acting under a specific statute rather than the common law, has nonetheless reached similar conclusions, particularly where the purported agent is named as a respondent. In its early case on the subject, *Bon Hennings Logging Co*., 132 NLRB 97 (1961),[11] the Board found the named individual not to be liable for backpay, excusing him only because he was totally under the control of the principal. In that case, Knowles was the supervisor and the proprietor of the trucking operation which hauled logs for the primary respondent. Among other things, Knowles committed some 8(a)(1) activity and discharged certain truckdrivers unlawfully. The Board held Knowles was personally responsible to remedy the 8(a)(1) activity, but not for the backpay due the employees. The Board said, ''[I]n the circumstances of this case, we do not believe that it will effectuate the policies of the Act to make Knowles personally responsible for the payment of backpay, as he was at all times in the employ and under the control of the Respondent employer. As there has been no bona fide lease or transfer of assets to Knowles, assets available for payment of backpay will be unaffected by the absence of responsibility by Knowles.'' Id. at 98. Although Knowles partially escaped, the concept of direct liability of the agent was not rejected.

Subsequently, in *Ogle Protection Service*, 149 NLRB 545, 546 fn. 1 (1964), the Board held James Ogle, alter ego of the corporation, personally responsible to remedy the unfair labor practices which had been committed, including backpay. Id. at 546 fn. 1. The principal concern in *Ogle* was whether or not the proper procedures had been followed to join the individual to the action against the corporation. The Board had no difficulty in citing *Bon Hennings Logging*, supra, as authority for holding the individual personally liable. Then, in *Carpet City Mechanical Co*., 244 NLRB 1031, 1034 (1979), the Board made clear that it would hold properly joined agents liable to remedy fully the unfair labor practices in which they participated, including backpay.

Similarly, in the instant case we have both Richmond Convalescent Hospital, Inc. and Prestige Health Care of California, Inc. properly named and served as Respondents. Thus, there is no issue of proper joinder. Moreover, even though the complaint's initial theory was that they were joint employers, finding that they are jointly and severally liable on a somewhat different theory is not offensive to any notion of due process. See the case cited by the General Counsel, *American Stores Packing Co*., 277 NLRB 1656 (1986).[12]

Accordingly, based on *Carpet City Mechanical* and its predecessors, I find Respondent Richmond and Respondent Prestige to be jointly and severally liable to remedy the unfair labor practices found here.[13]

THE REMEDY

Having found Respondent Richmond and Respondent Prestige to be jointly and severally liable for the violations of Section 8(a)(5), (3), and (1) of the Act as found here, I shall recommend that they be ordered to cease and desist therefrom and to take certain affirmative action to effectuate the policies of the Act. The affirmative action will include an order requiring them to bargain collectively in good faith by immediately complying with the Union's demand for a seniority list and connected relevant information and, on request, to bargain in good faith with respect to the effects of the transfer of the facility to the Shieldses. They shall further be ordered to immediately offer Maria Wells reinstatement to her former job and to make her whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of her discharge to the date of a proper offer of reinstatement[14] or, if reinstatement is not possible, to the date on which Wells finds permanent and substantially equivalent employment elsewhere, less interim earnings. Backpay shall be calculated as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950); interest shall be calculated as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, Respondents shall also be required to expunge from their records any reference to their discharge of Wells directing them not to use the discharge against her in any way. See *Sterling Sugars*, 261 NLRB 472 (1982).

[11] Enfd. and remanded on unrelated issue 308 F.2d 548 (9th Cir. 1962).

[12] During the hearing, the General Counsel advised that he intended to move to amend the complaint to alternatively plead that Respondent Prestige was an agent of Respondent Richmond. That motion is found in his brief. To the extent that it is necessary, the motion is granted. However, whether granted or not, under the Board's holding in *American Stores*, supra, the exact theory of joint and several liability need not be articulated. It is sufficient that those respondents are charged together as was done here.

[13] Cf. *NLRB v. New Madrid Mfg. Co*., 215 F.2d 908 (8th Cir. 1954).

[14] Recognizing that neither respondent currently has control of the facility, it may be appropriate to join the Shieldses, if necessary, under the *Perma Vinyl/Golden State* doctrine, to effect this remedy.

Conclusions of Law

1. (a) Respondent Richmond Convalescent Hospital, Inc. is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

(b) Respondent Chartham Management, Inc. is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

(c) Respondent Prestige Health Care of California, Inc. is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Chartham Management, Inc., at the time of the incidents covered by the complaint, was not an employer of any employees at the facility.

3. (a) Respondent Richmond Convalescent Hospital, Inc., at the time of the incidents described by the complaint, was the direct employer of the employees employed at the facility.

(b) Respondent Prestige Health Care of California Inc., at the time of the incidents described by the complaint, was Respondent Richmond's agent performing supervisory and managerial duties on behalf of and for the account of Respondent Richmond.

4. On or shortly after October 4, 1991, by refusing and/or declining to supply the Union, on a proper request, with a seniority list, together with related information, Respondents Richmond and Prestige violated Section 8(a)(5) and (1) of the Act.

5. In November 1991, and thereafter, by refusing to bargain with the Union over the effects of the transfer of ownership of the nursing home to the Shieldses, Respondents Richmond and Prestige violated Section 8(a)(5) and (1) of the Act.

6. By discharging Maria Wells on September 4, 1991, because of her status as a union steward and because of her activities in accord with that status, Respondents Richmond and Prestige violated Section 8(a)(3) and (1) of the Act.

7. By refusing to assist the Union to select an arbitrator to resolve the grievance filed on behalf of Wells, Respondents Richmond and Prestige violated Section 8(a)(5) and (1) of the Act.

8. Except as described above, the General Counsel has not proven that Respondents have engaged in any other unfair labor practices.

9. Taken as a whole, the foregoing violations of the Act are insufficient to conclude that Respondents have either repudiated the collective-bargaining contract or withdrawn recognition of the Union as the exclusive collective-bargaining representative of the employees in the appropriate bargaining unit.

[Recommended Order omitted from publication.]